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PA/HO Department of State
E.O. 12958, as amended
August 6, 2007

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

SEC[redacted]/NODIS

MEMORANDUM FOR THE PRESIDENT

FROM: Henry A. Kissinger

SUBJECT: U. S. Policy on Toxins (NSSM 85)

The NSC Review Group has completed its study of U. S. Policy on Toxins (Tab - Basic Paper). To assist you in your consideration of the issues, I have enclosed a brief background paper.

The study was initiated because of the ambiguity regarding whether toxins were classified as chemical or biological and, therefore, where they were meant to fall under your announced policies for biological research and chemical warfare. This ambiguity flows essentially from the fact that while toxins are chemicals (non-living matter which does not reproduce itself), they currently are produced by biological processes from living organisms. Though their production by chemical synthesis is technically possible, none of military interest has yet been so produced. Moreover, if used, the effects of some toxins would be similar to those of biological agents in the sense that some toxins cause what is commonly described as disease. Toxins, however, do not cause contagious disease which is transmissible from man to man, and are therefore non-epidemic.

There are three options:

OPTION I: Reserve the Option to Develop, Stockpile and Use in Retaliation Toxins Produced by Either Biological Processes or Chemical Synthesis. (Implicit in the acceptance of this option is an offensive, as well as defensive, research and development program for toxins, produced by either method, and for related delivery systems/weapons.)

-- This option would retain (1) a capability to achieve significant logistic advantage or large area coverage in either a lethal or incapacitating role, (2) maximum flexibility to develop a variety of toxins which may

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have military utility, (3) the most promising current potential to achieve an incapacitating capability (staphlococcal enterotoxin - produced by biological processes), and possibly (4) a bargaining lever for future arms control discussions.

-- But this policy could be used as basis for charging the U.S. with preparation for biological warfare. Production of toxins by biological processes would cast doubt on the significance and credibility of the U.S. renunciation of biological warfare and cause domestic political problems associated with production, storage, transportation and testing. Moreover, any use of toxins could be used as justification by others for employing biological agents against U.S. forces. Also, our interpretation of the U.K. Draft Convention on biological warfare would differ from that of the U.K. itself if we take the position that the production of toxins by bacteriological/biological processes is permitted, and Senate ratification proceedings on the Geneva Protocol would be more complicated.

OPTION II: Renounce the Option to Develop, Stockpile and Use in Retaliation Toxins Which are Produced by Biological Processes. Reserve the Option to Develop, Stockpile and Use in Retaliation Only Those Toxins Produced by Chemical Synthesis. (Implicit in the acceptance of this option are: (1) a defensive research and development program only for biologically-produced toxins; and (2) offensive, as well as defensive, research and development programs for the development of chemically-synthesized toxins and related delivery system/weapons.)

-- This option would leave open the development of a toxin capability by chemical synthesis thereby retaining the advantages of flexibility and relative logistics simplicity of Option 1 if synthesis is accomplished. Moreover, it (1) would not require modification of the U.K. Draft Convention and (2) would remove a basis for claiming that we were acting inconsistently with the November 25th announcement on biological programs.

-- But, it would tend to limit future capabilities to lethal toxins more amenable to synthesis than is the only known incapacitating toxin. It also would deny toxins to the U.S. for at least

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3-5 years while chemical production methods are developed. Since the end product is identical regardless of production method, it also might be seen as a loophole in the renunciation of a biological warfare program based solely on the method of manufacture. It might complicate future arms control measures and verification (a country could produce toxins biologically and claim they were chemically synthesized).

OPTION III: Renounce the Use, and Hence the Development and Stockpiling, of Weapons Systems Using Toxins Produced Either by Chemical Synthesis or Biological Processes. (Implicit in the acceptance of this option are only defensive research and development programs for all toxins with the purposes of assuring adequate defensive measures and of protecting against technological surprise.)

-- This option would provide necessary defensive measures and protect against technological surprise. It also would (1) eliminate questions as to the significance and credibility of the U.S. policy on biological methods of warfare and research, (2) put us in the best position to ratify the Geneva Protocol with the type of reservation most closely corresponding to our policy on chemical warfare and biological research, (3) enable us to accept the U.K. position on the U.K. Draft Convention, and (4) be received favorably in public discussion avoiding any appearance of loopholes in U.S. policy on biological research;

-- But, it would foreclose development of a weapons system which may have military utility and could place us at a disadvantage if other countries had toxin programs without similar restrictions. Moreover, it could expose us to a challenge as to why we are willing to unilaterally renounce one class of chemical agents but not others. Unilateral renunciation of this class of chemicals could weaken our case for insisting on adequate verification of arms control agreements involving chemicals.

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Agency positions and comments on the Review Group paper are enclosed and tabbed.

Under Secretary of State Richardson and Ambassador Smith both favor Option III on the grounds that (1) the need for a retaliatory toxin capability in addition to current and planned chemical capabilities is highly questionable and (2) the international and domestic political costs of retaining the option to retaliate with toxins will be high. Both believe that preserving an option to retaliate with toxins (Option 1 or Option 2) would (1) detract from the favorable impact of your November 25th announcement on U.S. chemical warfare and biological research policy, (2) make more difficult the winning of international support for the U.K. Draft Convention, and (3) complicate efforts to gain Senate ratification of the Geneva Protocol. Both also believe that there is some risk that indication of U.S. interests in toxins could stimulate further interest in them by other countries. Ambassador Smith does not believe that renunciation of chemically synthesized toxins would affect our ability to insist on treating biological methods of warfare separately from chemical warfare in arms control negotiations or impair our ability to insist on verification requirements we deem necessary.

Dr. DuBridge favors Option II. He believes that it implements your announced policy on biological research. At the same time he notes that it would permit development of additional capabilities through chemical synthesis of toxins, and avoid introducing ambiguities into what was and was not allowable in the chemical field.

Mr. Shakespeare prefers Option III on the ground that it would be the clearest follow-through of your November 25th announcement and thus be most acceptable to the public at home and abroad.

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I recommend that you approve Option II renouncing biologically produced toxins and confining U.S. programs involving them to research and development for defensive purposes only but reserving the option to produce chemically synthesized toxins. In so doing your renunciation of biological means of warfare will be reinforced and ambiguities in our position which could arise from biological production processes for toxins will be eliminated. We can continue to support the principles of the U.K. Draft Convention as you announced on November 25th. Though we will be questioned in the Geneva Protocol ratification proceedings, our position on chemically synthesized toxins will be the same as that for all chemical weapons and the reservations we will take need not be modified further. I believe it important to reserve the option for chemically synthesized toxins for two reasons. The field is new and we do not know where research will take us. I am not convinced that toxins will have significant military utility. But until we know what the potential is, we should not unilaterally foreclose development of what may be a useful weapon system. Moreover, toxins are chemicals however they are produced. If we unilaterally forego the research and possible future production of chemically synthesized toxins we increase the risk that our entire retaliatory chemical program will come under attack. If we are willing to renounce one chemical weapon produced by chemical means, the argument will run, why should we not renounce all chemical weapons. I do not believe that we should run this risk.

I have enclosed a draft NSDM and draft public statement which give effect to a policy based upon Option II of the Review Group paper which I recommend you approve.

Draft NSDM OPTION III

Approve [signature]

Disapprove_____

See Me_____

Draft Public Statement

Approve [signature]

Disapprove_____

See Me_____

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